

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AUGUST IMAGE, LLC; and MARK
SELIGER,

Plaintiffs,

v.

GIRARD ENTERTAINMENT & MEDIA LLC;
and KEITH GIRARD,

Defendants.

Civil Action No.: 1:23-cv-01492-VEC-RFT

**DECLARATION OF LAUREN KELLY IN
OPPOSITION TO DEFENDANTS'
MOTION FOR ATTORNEY'S FEES**

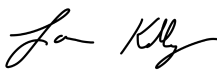
DECLARATION OF LAUREN KELLY

I, Lauren Kelly, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. This testimony is given from my own personal knowledge. I make this declaration in opposition to Defendants' Motion for Attorney's Fees. If called as a witness, I could and would competently testify as set forth below.
2. I am the senior agent at Plaintiff August Image, LLC ("August").
3. August is a full-service syndication and rights management agency which has exclusive licensing and syndication agreements with hundreds of professional photographers who each make their living through the lawful licensing and use of their original artworks.
4. The photographs we syndicate are, unfortunately, often distributed by third parties without license or permission. This tramples on our exclusive rights and compromises our business and the livelihoods of our clients. Thus, our company pursues unauthorized uses of the images in our library as a necessity. We believe that if we did not do so the legitimate licensing market for that work would shrink to next to nothing.
5. That said, before taking any legal action we always consider fair use. While I and August's other management are not lawyers, we understand the importance of fair use in the creative world and undertake due diligence to ensure we do not take legal action against uses of our artists' work that we reasonably believe to be fair use.
6. In reviewing the claim in the instant case, August did not believe that Defendants' unauthorized use of Mark Seliger's photograph constituted fair use, as to our eyes the article in which it appeared had little if anything to do with the photograph, and merely used that photograph as a banner image to draw in viewers.

I declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge.

Executed on April 26, 2024 in New York, NY.

By: 

Lauren Kelly
Declarant